

Defendants.

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) **Civil Action No. 10 CV 4009 (SAS)**
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) **ECF Case**
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**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS
FOR WANT OF SUBJECT MATTER JURISDICTION**

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This Court lacks subject matter jurisdiction over this action, which purports to be predicated on diversity of citizenship, under 28 U.S.C. § 1332(a).

THE COURT LACKS SUBJECT MATTER JURISDICTION

“It is axiomatic that, for diversity jurisdiction to be available, all of the adverse parties in a suit must be completely diverse with regard to citizenship.” *E.R. Squibb & Sons, Inc. v. Accident & Cas. Ins. Co.*, 160 F.3d 925, 930 (2d Cir. 1998). *See also Strawbridge v. Curtiss*, 7 U.S. 267 (1806). Unless the party seeking to invoke diversity jurisdiction satisfies its burden of demonstrating that the grounds for diversity exist and that the Plaintiff does not share citizenship with any of the defendants, the case must be dismissed. *McNutt v. Gen. Motors Acceptance Corp. of Indiana*, 298 U.S. 178, 189 (1936).

Defendant Haynes and Boone, LLP (“HB”) is alleged to be a Texas limited liability partnership (“LLP”). Complaint ¶5. (A copy of the Complaint is annexed to the accompanying Declaration of Kenneth Bezozo (“Bezozo Decl.”) as Exhibit A.) A limited liability partnership “has the citizenship of each of its partners.” *Herrick Co., Inc. v. SCS Commc’ns, Inc.*, 251 F.3d 315, 322 (2d Cir. 2001) (Skadden, Arps, Slate, Meagher & Flom LLP); *Mudge Rose Guthrie Alexander & Ferdon v. Pickett*, 11 F. Supp. 2d 449, 451-52 (S.D.N.Y. 1998) (citizenship of LLP determined by partners’ citizenship); *Kranz & Berman, LLP v. Dalal*, No. 09 Civ. 9339 (DLC), 2010 WL 1875695, at *4 n.6 (S.D.N.Y. May 11, 2010) (“K & B is a limited liability partnership and thus has the citizenship of all of its partners for purposes of establishing diversity.”); *MIG, Inc. v. Paul Weiss*, No. 09 Civ. 5593, 2010 WL 1222015, at *15 n.6 (S.D.N.Y. Mar. 29, 2010) (“For the purposes of establishing the domicile of a partnership, or a limited liability partnership like Defendant, the partnership is deemed to have the domicile of each of its partners.”); 15

MOORE'S FEDERAL PRACTICE § 102.57[9] (3d ed. 2009) ("For purposes of diversity jurisdiction, the citizenship of a limited liability partnership is determined by the citizenship of the partners").

The present Complaint does not identify, much less indicate the citizenship of, each and every member of HB, as it must to establish diversity jurisdiction. *See* Complaint ¶5. That, alone, warrants dismissal. Nor can Plaintiff satisfy his burden of establishing complete diversity by amending the Complaint. Paragraph 4 of the Complaint alleges that Plaintiff "resides in the state of New Jersey." Presumably, that is an inarticulate attempt to allege the Plaintiff's citizenship. An HB partner, Kenneth Bezozo, is a citizen of the State of New Jersey. Bezozo Decl. ¶¶1 & 2.

Accordingly, complete diversity is absent, and the Complaint must be dismissed for lack of subject matter jurisdiction. The Court also lacks jurisdiction over the person of the Defendant Conner but, as subject matter jurisdiction is lacking, the absence of personal jurisdiction need not be addressed at this time.

CONCLUSION

Defendants' motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure should be granted.

Respectfully submitted,

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